



IN THE
Supreme Court of the United States

OCTOBER TERM, 1950.

No. 12, Original.

UNITED STATES OF AMERICA, *Plaintiff.*

VS.

STATE OF LOUISIANA, *Defendant.*

**OBJECTIONS TO DECREE PROPOSED BY THE
UNITED STATES, AND STATEMENT IN
SUPPORT OF OBJECTIONS.**

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OBJECTIONS

Comes now the State of Louisiana, through its Attorney General, appearing herein solely for the purpose of objecting to the decree proposed by plaintiff herein, and without in any manner waiving but specially reserving all rights under its petition for rehearing herein, files its objections, as hereinbelow stated, to said proposed decree:

1.

Objection is taken to the language contained in the first sentence of the first paragraph of the proposed decree unless, following said sentence, the following

words are added: "to the extent of all governmental powers existing under the Constitution, laws and treaties of the United States."

2.

Objection is raised to the following language which appears in the second sentence of the first paragraph of the proposed decree:

"The State of Louisiana has no title thereto or property interest therein."

3.

Objection is urged to the entirety of paragraph two of the proposed decree, for the reason that there is nothing in the Court's opinion which would support or authorize injunctive relief; the Court not deciding that the United States has title to the area described and it appearing that there is no congressional authority for the exercise by the United States or its lessees of the rights that the decree would enjoin.

Further, the proposed decree seeks to enjoin lessees of the State of Louisiana, who are not parties to this suit, "from carrying on any activities upon or in the submerged area" for the purpose of producing "petroleum, gas or other valuable mineral products," a decree that would not only cause great harm to the

State and to its lessees but to the Nation as well. For, as pointed out elsewhere herein there is no law by which the United States or any officers of the United States can presently authorize the continuation of such operations and if the injunction should issue they all would have to cease. And, an injunction that would so operate as suggested in the proposed decree would stop the useful work being carried on by oil operators at great expense for the production of petroleum that is needed for the National economy and National defense.

4.

Objection is taken to the language of paragraph three of the proposed decree ordering an accounting by the State of Louisiana to the United States.

WHEREFORE, Defendant prays that no decree be entered herein pending a decision on its petition for rehearing; that in the event but only in the event that said petition should be denied that the decree to be entered herein be limited to the following two paragraphs:

"1. The United States is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands, minerals and other things underlying the Gulf of Mexico, lying seaward of the ordinary low-water mark on the coast of Louisiana, and outside of the inland waters, extending

seaward twenty-seven marine miles and bounded on the east and west, respectively, by the eastern and western boundaries of the State of Louisiana, to the extent of all governmental powers existing under the Constitution, laws and treaties of the United States.

"2. Jurisdiction is reserved by this Court to enter such further orders and to issue such writs as may from time to time be deemed advisable or necessary to give full force and effect to this decree."

Defendant further prays that if the Court should disagree with the foregoing proposal, then prior to the entry of any other decree Defendant have the opportunity to file additional brief in support of its objections and to be heard orally, either formally or informally, at the pleasure of the Court.

Respectfully submitted,

BOLIVAR E. KEMP, JR.,
Attorney General, State of Louisiana.

JOHN L. MADDEN,
*Assistant Attorney General,
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OCTOBER, 1950 ..

STATEMENT IN SUPPORT OF OBJECTIONS

1.

It is entirely obvious that the United States has no powers except those granted by the Constitution, or contained in the laws and treaties of the United States; and it is suggested that the addition of the words "to the extent of all governmental powers existing under the Constitution, laws and treaties of the United States" be made to the first sentence of the first paragraph of the proposed decree, so that the decree would then be consistent with what the Court actually decided in its opinion.

2.

The opinion or decision of the Court contains no statement that the State of Louisiana has no title or property interest in the lands, minerals and other things underlying the Gulf of Mexico within the area described in Article 2 of the Complaint. The opinion in *United States v. California*, 332 U. S. 19, did not justify the decree in that case (332 U. S. 805) in regard to title; the decree to that extent having been entered with California's acquiescence.

3.

Paragraph 2 of the proposed decree pretends to enjoin the State of Louisiana and all its lessees or

persons claiming under it from carrying on activities in the area described for the purpose of removing petroleum, gas or other valuable mineral products "except under authorization first obtained from the United States."

As pointed out more fully in a later paragraph hereof, there is nothing in the opinion to serve as a basis for title in the United States.

It is undeniably true that an injunction would cause the cessation of oil, gas and mineral activities in the area involved herein. This result would bring about the destruction of the very foundation upon which the decision in this case was based; for, the Court held in its opinion that "protection and control of the area are indeed functions of national external sovereignty. The marginal sea is a national, not a state, concern. National interests, national responsibilities, national concerns are involved. The problems of commerce, national defense, relations with other powers, war and peace focus there. National rights must therefore be paramount in that area." This, then, being the foundation for the Court's decision in this case, it is clear that an injunction would defeat the very principle or theory upon which the case was decided.

The brief of the State of Louisiana, opposing Plaintiff's Motion for Judgment and supporting the

State's Motion to Dismiss and Other Defenses pointed out clearly, and it has not been denied by Plaintiff, that there is at present no Federal law authorizing any representative of the United States to grant leases or permits for carrying on such activities upon or in the submerged area described in Paragraph 1 of the proposed decree. It was proved without denial that there is no way in which the United States or its lessees or persons claiming under it could carry on the activities which the proposed decree would enjoin; and as the United States has no right to so operate or to permit others to operate upon or in the submerged area, there could be no right, in the absence of title and of congressional authority, to enjoin operations by the State of Louisiana or those holding under it.

Further, the proposed decree is without precedent, without legal foundation and without equity so far as it would operate against the Lessees of the State of Louisiana, or others claiming under it and who are carrying on operations for the production of petroleum and other mineral products from the submerged area. The Lessees are not parties to this suit. The motion of the State of Louisiana to have them made parties was opposed by the United States and denied by this Court, but in the face of the refusal to allow them to urge their rights, the proposed decree would now make

them parties to the suit by enjoining their activities under contracts made in good faith with the State of Louisiana.

It is common knowledge that the operators have spent hundred of millions of dollars for equipment and fixed structures for the production of petroleum from the submerged area, a production that this court has recognized to be of National concern. To enjoin the use of their own properties without making them parties to the suit would deprive them of their property in violation of the Fifth Amendment of the Constitution of the United States and without due process of law. Injunction is an equitable remedy; but there are no equities here to be served by enjoining operations that are in the National interest and at the expense of those who have acted in good faith.*

The decree in *United States v. California*, 332 U. S. 805, did not enjoin operations either by the State of California or its lessees. As this Court knows, the California case is still open to determine the boundaries between inland and outer waters. The United States recognizes that many questions will arise in this case as to the distinction between waters affected by the decree and those that are not within it. Yet, the broad terms of the proposed decree would leave the operators in a state of confusion, not knowing in many individual

*and who were denied opportunity to be heard this case.

cases whether their activities are within the dividing line or outside as it may be eventually fixed by final order of this Court. So, to say the least, the proposed injunction in the decree is now premature.

4.

In the written opinion and decision of the Court herein, no reference whatever was made to an accounting by the State of Louisiana to the Federal Government for money derived by the former from the area described in Article 2 of the Complaint.

An accounting for money received from real property can only be demanded by the holder of fee simple title or one having a proprietary right or interest. The United States was not declared to hold title to the lands and resources involved in this cause.

In this respect, the opinion or decision by the Court in this case, and the language contained in the proposed decree are contradictory; for the Court in its opinion or decision held that "the issue in this class of litigation does not turn on title or ownership in the conventional sense." In truth, the Court denied Louisiana a trial of the title question. Clearly, the Court's opinion must be construed as denying the fee title claim of the United States. In any event, the United States is not entitled to an accounting under the terms

of the Court's opinion or decision herein for the reason that the United States was not held to possess fee simple title to or proprietary interest in the lands, minerals and other things involved in this cause.

It is equally clear that a financial accounting has no relation whatever to the obligation of the United States to protect the area of the marginal sea. There is no legal ground for holding or concluding that the State of Louisiana should be required to account to the United States because of the latter's obligations in the realm of external sovereignty, or in discharging its national duties under the Constitution of the United States.

Moreover, it is an irrefutable fact that the State of Louisiana has no current funds which could be appropriated for the accounting purposes aforesaid; but even if a large excess of revenues existed in the general fund of the State of Louisiana, this Court would have no jurisdiction to order the Louisiana Legislature to enact necessary laws to appropriate that money or any part thereof for the benefit of the United States. And, as there is no existing remedy held by the United States to require payment of such money to it, a decree by this Court ordering a financial accounting would be unenforceable.

And it should be kept in mind that if it could or should properly be held that the State of Louisiana

must account for monies that it has received; if title could be vested in the United States ~~the~~^{*} the State has none and if the State's lessees thereby acquired no legal right to operate in the area, good conscience would require the accounting to be made to those who show financial loss and who paid the State acting on decisions of this Court that had been unchallenged for more than a century and which supported State ownership of lands beneath navigable waters within their respective jurisdictions.

Respectfully submitted,

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*on the mere assumption that